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February 6, 2006

NEPA Draft Report
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building

On behalf of the Regional Council of Rural Counties, we appreciate the opportunity to comment on the draft recommendations. The Regional Council of Rural Counties (RCRC) represents thirty small and rural counties in California. With federal land ownership as high as 90% in our rural counties, the National Environmental Policy Act (NEPA) can have significant impacts to the quality of life in our member counties.

RCRC recognizes the difficulty to improve upon good legislation sometimes poorly implemented. The purposes of NEPA are admirable: “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” (NEPA Sec. 2). Congress further declared the policy “to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (NEPA Sec. 101a). It is against this back drop that we evaluate the draft recommendations.

Group 1 – Addressing Delays in the Process

Recommendation 1.1: Amend NEPA to define “major federal action”. We agree that the term “major federal action” needs a redefinition in context with the law. NEPA requires a detail statement only for legislative proposals and “other major Federal actions significantly affecting the quality of the human environment” (emphasis added). Thus, a detailed analysis is triggered by two-part criteria; a major federal action and one that significantly affects the human environment.

We would support the proposed amendments to the definition of “major Federal actions” as new and continuing projects that would require substantial planning, time, resources, or expenditures. To that we would add the phrase, “now or in the foreseeable future”. The addition of that phrase would suggest consideration of a commitment of resources required for future maintenance of the proposed project. We would also support an amendment that includes actions that would result in substantial modifications to the human environment. With an ever changing natural environment, a decision not to take an action or to take a minor action would not require substantial planning, resources or expenditures today but may result in a significant environmental change from the present or historical conditions and a commitment of significant future resources. Examples of such decisions are decisions

not to suppress wildfires that could become catastrophic or decisions that let wildland fuels accumulate to the point that a major federal action would be required to restore the wildland condition.

We believe Congress would be wise to establish a procedure for determining actions that significantly affect the quality of the human environment. As has been seen through the implementing years, the qualifier “significantly affecting the quality of the human environment” is subjective and difficult for federal agencies to determine. Local government and the public may be best positioned to establish significance to the human environment. We would suggest Congress place the burden of proof for this criteria upon the participants in the NEPA process, once the proposing federal agency fully discloses a detailed project. The responsibilities of NEPA would then be equitable divided: the federal agency to detail the project and determine whether it is a major federal action, and the interested participants to determine the significance of the affect upon the quality of the human environment. A major federal action for which the public cannot demonstrate a probable significant affect on the quality of life would not be subject to a detailed environmental statement.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents. We recognize the need to expedite the NEPA process but do not believe adding mandatory timelines for completion would be helpful. Agencies could either drag out the process until they were declared legally complete or rush through and risk insufficient analyses. Rather, Congress should provide unambiguous criteria that limits the detailed statement to unresolved conflicts as required by NEPA provision 102 (E) “Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternatives uses of available resources”.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS). We concur with this recommendation. We believe that detailed analyses of repeated arguments that a project is either a major federal action or will significantly affect the quality of the human environment when those arguments have failed on hundreds of similar projects, should not be required. We further believe the burden of proof of the similarity of a project to other non-significant projects should rest on the federal agency.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents. We concur that amending NEPA to include language from the Code of Federal Regulations will clarify the appropriate usage of supplemental NEPA documents.

Group 2 – Enhancing Public Participation

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments. We believe this recommendation has merit in meeting some of NEPA’s objectives. The most significant affects upon the human environment will generally be upon local interests, and the measure of productive and enjoyable harmony between man and his environment is best achieved across the local area. However, an assessment of the general welfare, efforts to prevent or eliminate damage to the environment and enhance our understanding of the ecological systems may be benefited by a balance of local and outside interests.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7. Page restrictions of 150 to 300 pages would be helpful, provided direction was given that the EIS would include a detailed summary of all pertinent information not include in the EIS.

Group 3 – Better Involvement for State, Local and Tribal Stakeholders

Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status. This recommendation is consistent with the NEPA stated policy to work in cooperation with the state and local governments. Denial of state and local government's request for cooperating agency status fosters an atmosphere of mistrust and resentment. It is difficult for local governments to dedicate staff to federal projects when meaningful participation is questionable. We believe that federal, state and local government partnerships provide the best opportunity to achieve the objectives of NEPA.

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements. This direction would be helpful where federal grants are awarded for projects on state or private lands. Currently, such projects must be prepared under a dual evaluation procedure. A single process would save time, funding and frustration.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision. It would be helpful to provide by statute, equal access to courts. Courts have frequently rejected standing for citizen suits alleging an imbalance between economic use and resource protection. Yet through NEPA federal agencies are to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; ... achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources” (Sec 101 (a)). It is difficult to ensure these values when those representing these values are at a judicial disadvantage.

Additionally, an objective of NEPA is to resolve conflicts outside of the judicial process. It would be helpful for Congress to clarify that issues raised in court must have first been raised at an appropriate time in the NEPA process, and that the parties made a diligent effort to resolve the conflicts during the process. Where judicial action is filed, the court or attorneys should be directed to include any parties affected by the issues in any settlement proceedings outside of the court.

Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre clear” projects. We question the necessity of requiring agencies to pre clear projects with CEQ, but we do believe it would be beneficial for CEQ to provide agencies with a summary of judicial or administrative decisions, advising agencies of its applicability. Such action would contribute to a reduction in repeat assessment deficiencies and greater consistency between analyses.

Group 5 – Clarifying Alternatives Analysis

Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible. Feasibility includes consideration for costs, existing technologies, and socioeconomic consequences. We believe the addition of this requirement would improve many NEPA documents. We would add the suggestion that each of the alternatives must accomplish the project objective. Many NEPA documents develop alternatives that accomplish the objective in various degrees, rather than different alternatives to accomplish the same objective. Using fuel reduction treatments as an example, a typical NEPA document includes alternatives that propose different treatment acres, degrees of thinning and methods of treatment. Most of the alternatives would not accomplish the objective of fire prevention. Agencies should instead be required to analyze different methods and patterns of treatment that will reduce fire risk to the same or nearly the same degree.

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project. An honest look at the no action alternative is paramount to evaluating the impacts of the proposed action, especially in a growing natural environment. Additionally, an alternative that provides an historical perspective would be helpful in forest and range landscapes. Due to a variety of reasons, including curtailment of annual Native American set fires, change in climatic conditions, fire suppression, and harvesting practices, the current conditions are far different than historical conditions. Indeed, if NEPA had been law in 1850, settlers would have had to develop a NEPA document to stop Native American burning and initiate fire suppression which have allowed in part, forests and range lands to grow into present conditions. No action will continue the degeneracy from its original condition which should be appropriately acknowledged and assessed in the evaluation. We also concur with the proposal to require an agency to reject the no action alternative if, after considering the changes from historical conditions, on balance the impacts of not undertaking a project or decision would outweigh the impacts of executing the project or decision.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory. Failure to complete the mitigation section of the proposal has been a frustration to all parties to federal projects. We believe that mitigation included in the proposal or agreed to as part of the proposal, should be binding upon implementation of the project, provided the mitigation was developed through the NEPA process. In many cases, mitigation for T&E species, for example, is developed after the close of the public involvement in the NEPA process. Mitigation developed outside the public process should not require the same level of commitment as that developed through public involvement.

Group 6 – Better Federal Agency Coordination

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders. Collaboration with affected stakeholders has proven effective in recent years. Appropriate collaboration can do much to rebuild a trust relationship. Additionally, Congress should direct that consultations with other Federal agencies should be subject to public comment. Typically, consultation with other agencies, such as the Fish and Wildlife Service over T&E species, occur after public comment, rendering public comment ineffective. NEPA requires federal agencies to consult and obtain the comments of other federal agencies. Then, “Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public, and shall accompany the proposal through the existing agency review processes” (NEPA Section 102 C). Clarifying that consultation with all federal agencies should be done before issuance of the draft document would be extremely beneficial. The public could fulfill its review purpose to assist the agencies in developing reasonable and prudent alternatives.

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies. No comment

Group 7 – Additional Authority for the Council on Environmental Quality

Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within the Council on Environmental Quality. No Comment.

Recommendation 7.2: Direct CEQ to control NEPA related costs. Many of these recommendations would assist in controlling NEPA costs. Controlling the costs should be an ongoing effort and CEQ would be an appropriate authority for the task.

Group 8 – Clarify Meaning of “Cumulative Impacts”

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts. We concur that an assessment of existing environmental conditions will serve as the methodology to account for past actions. As stated earlier, brief overview of the changes from historical conditions should suffice to provide the basis for evaluating the no action alternative and making comparisons to the proposed action.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis. Congressional direction would be helpful in the assessment of cumulative impacts. Absent Congressional direction, agencies will have to await the development of case law before requirements for cumulative impact analyses can be understood.

Group 9 – Studies

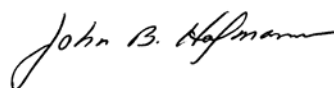
Recommendation 9.1: CEQ study of NEPA’s interaction with other Federal environmental laws. A study of the interaction of environmental laws would be beneficial. We would not be surprised to see conflicting and overlapping provisions, but even if all laws were compatible, agencies and publics could benefit from understanding their interaction.

Recommendation 9.2: CEQ study of current Federal agency NEPA staffing issues. In addition to reporting the amount and experience of key NEPA staff, we recommend that the study include a review of the adequacy of the training available for NEPA staff. It might also include the benefits of creating a standardized NEPA template for similar type projects and including information helpful for analysis teams and decisionmakers to consider in such projects.

Recommendation 9.3: CEQ study of NEPA’s interaction with state “min-NEPAs”. No comment.

We appreciate the opportunity to comment on the draft recommendations and the energy of the NEPA task force to consider improvements to NEPA. NEPA is the central planning law for engaging publics and federal agencies in major federal actions. We believe it deserves a hard look at regular intervals.

Sincerely,

A handwritten signature in black ink that reads "John B. Hofmann". The signature is written in a cursive style with a vertical red line to its right.

John B. Hofmann
Director, Natural Resources